

## Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2)** The classification is utilized in the area by the construction industry; and
- (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where

appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part



of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll

period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the



journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subpara-



graph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

**(3)** The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.



# REQUIRED FEDERAL CONTRACT PROVISIONS

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Italics — Explanatory; not contract language

S 200.326 Contract provisions. The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

### All Contracts, including engineering agreements

THRESHOLD	PROVISION	CITATION
None	(H) Debarment and Suspension (Executive Orders 12549 and 12689)— A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulator authority other than Executive Order 12549.	2 CFR 200 APPENDIX II (H)
None	The grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives must have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.	Formerly 24 CFR §85.36(i)(10)



None	Grantees or subgrantees must retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.	Formerly 24 CFR §85.36(i)(11)
>\$10,000	(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.	2 CFR 200 APPENDIX II (B)
>\$150,000	(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian A enc	2 CFR 200 APPENDIX II (A)
	Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.	

### Construction Contracts

THRESHOLD	PROVISION	CITATION
for Davis Bacon and Copeland "Anti-Kickback" Act; OO,000 for Contract Work Hours and Safety Standards Act	<p>HUD 4010 Federal labor standards provisions include:</p> <ol style="list-style-type: none"> <li>1. Davis Bacon Act (40 U.S. C. 276a to 276a-7) as supplemented by DOL regulations (29 CFR part 5);</li> <li>2. Copeland "Anti-Kickback" Act (40 U.S. C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3); and</li> <li>3. Contract Work Hours and Safety Standards Act</li> </ol> <p>See HUD 4010 contract language in Appendix F. Inclusion of this language into the construction contract satisfies contract requirements of the separate acts noted.</p>	



<p>(Satisfied with inclusion of HUD 4010)</p>	<p>Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5) and with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3):</p> <p>(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.</p>	<p>2 CFR 200 APPENDIX II (D)</p>
<p>&gt;\$10,000</p>	<p>(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of 'federally assisted construction contract' in 41 CFR Part 60—1.3 must include the equal opportunity clause provided under 41 CFR <del>30-1.4(b)</del>, in accordance with Executive Order 11246, "Equal Employment Opportunity " 30 FR 12319, 12935, 3 CFR</p>	<p>2 CFR 200 APPENDIX II (C) and 41 CFR 560-1.40)</p>



Part, 1964—1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal

Employment Opportunity, " and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. "

Therefore, include the following EO clause (not in italics) in construction contracts > \$10,000:

560-1.4(b) Equal opportunity clause.

(b) Federally assisted construction contracts. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1.) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.



	<p>(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for</p> <p>(3) employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.</p> <p>(4) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or</p>	
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	<p>action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.</p> <p>(5) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.</p> <p>(6) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.</p> <p>(7) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.</p> <p>(8) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September</p>	
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24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 1 1246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 1 1246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering a enc and the



Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997; 79 FR 72993, Dec. 9, 2014; 80 FR 54934, September 11, 2015]



Purchase price > \$10,000	Per 2CFR 200.322 Procurement of Recovered Materials, Grantees, subgrantees, and their contractors must comply with section 6002 of the Solid Waste Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.	2 CFR 200 APPENDIX II (J) and 2 CFR 200.322
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≥\$100,000	(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.	2 CFR 200 APPENDIX II (I) and 24 CFR 5570.303
>\$100,000 (Satisfied with inclusion of HUD 4010)	(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701—3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.	2 CFR 200 APPENDIX II (E)



<p>OO,000 for contracts (And federal assistance &gt;\$200,000)</p>	<p>5135.38 Section 3 clause All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):</p> <p>A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.</p> <p>B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.</p> <p>C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and of titles subject to hire, availability of</p>	<p>24 CFR 5135.38</p>
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	<p>apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.</p> <p>D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.</p> <p>E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.</p> <p>F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.</p> <p>G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7 b</p>	
>\$150,000	<p>(G) Clean Air Act (42 U.S.C. 7401-7671 q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251—1387), as amended—</p> <p>Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401—7671 q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251—1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).</p>	<p>2 CFR 200 APPENDIX II (G)</p>



# Title 29 — LABOR

## Subtitle A — Office of the Secretary of Labor

### PART 3 — CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

- Sec.
- 3.1 Purpose and scope
  - 3.2 Definitions
  - 3.3 Weekly statement with respect to payment of wages
  - 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.
  - 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.
  - 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.
  - 3.7 Applications for the approval of the Secretary of Labor
  - 3.8 Action by the Secretary of Labor upon applications.
  - 3.9 Prohibited payroll deductions.
  - 3.10 Methods of payment of wages.
  - 3.11 Regulations part of contract.

**AUTHORITY:** The provisions of this Part 3 issued under R.S. 161, sec. 2, 48 Stat. §48; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 5 U.S.C. 301; 40 U.S.C. 276c.

**SOURCE:** The provisions of this Part 3 appear at 29 F.R. 97, Jan. 4, 1964, unless otherwise noted.

#### Section 3.1 Purpose and Scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of

June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally-assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

#### Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms “building” or “work” generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a “building” or “work” within the meaning of the regulations in this part.

(b) The terms “construction,” “prosecution,” “completion,” or “repair” mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms “public building” or “public work” include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term “building or work financed in whole or in part by loans or grants from the United States” includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is “employed” and receiving “wages,” regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term “any affiliated person” includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary or otherwise, and an officer or agent of such corporation.

(g) The term “Federal agency” means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentality’s of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentality’s.



{29 FR 97, Jan. 4, 1964, as amended at 33 FR 32575, Nov. 27, 1973}

**Section 3.3 Weekly statement with respect to payment of wages.**

(a) As used in this section, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, "Statement of Compliance," or on an identical form on the back of WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such

conditions as the Secretary of Labor may specify.

{29 F.R. 95, Jan. 4, 1964, as amended at 33 F.R. 10186, July 17, 1968}

**Section 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.**

(a) Each weekly statement required under §3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

### **Section 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.**

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A “bona fide prepayment of wages” is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless, the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions, or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their

families and dependents: Provided, however, That the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments:



Provided, however, that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under §516.27(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either (1) voluntarily consented to be the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.  
{36 F.R. 9770, May 28, 1971.}

### **Section 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.**

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and  
(d) The deduction serves the convenience and interest of the employee.

### **Section 3.7 Applications for the approval of the Secretary of Labor.**

Any application for the making of payroll deductions under §3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted

upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of §3.6, and specifies any conditions which have changed in regard to the payroll deductions.  
{36 F.R. 9770, May 28, 1971.}

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of §3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

### **Section 3.8 Action by the Secretary of Labor upon applications.**

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of §3.6; and

shall notify the applicant in writing of his decision.

### **Section 3.9 Prohibited payroll deductions.**

Deductions not elsewhere provided for by this part and which are not found to be permissible under §3.6 are prohibited.

### **Section 3.10 Methods of payment of wages.**

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

### **Section 3.11 Regulations part of contract.**

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.



## PROPOSED CONTRACTS BREAKDOWN

Type of Contracts	No. of Contracts	Estimated Total Dollar Amount	Estimated No. to Local Business	Estimated \$ Amount to Local Business
Totals:				

## ESTIMATED PROJECT WORKFORCE BREAKDOWN

Work Classifications	Total Estimated Positions	No. of Positions Currently Filled	No. Positions Not Filled	No. Positions to Fill with LM/ Residents
Totals:				

## SECTION 504 CERTIFICATION

### POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

The \_\_\_\_\_ does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its federally assisted programs or activities.

(Name) \_\_\_\_\_

(Address) \_\_\_\_\_

\_\_\_\_\_  
City State Zip

Telephone Number ( \_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_ Voice  
( \_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_ TDD

has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's (HUD) regulations implementing Section 504 (24 CFR Part 8. dated June 2, 1988).





(d) The names and addresses of all other persons having a substantial interest in the undersigned, and the nature of the interest are:

NAME	ADDRESS	NATURE OF INTEREST

(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are:

NAME	ADDRESS	TRADE CLASSIFICATION

Date \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_



	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER. . . \$	13.04	e. ee
LABORER : Common or General. . . . .	9.71	e. ee
LABORER : Pipelayer. . . . .	13.75	e. ee
OPERATOR: Backhoe/ Trackhoe. . . . \$	13.25	e. ee
OPERATOR:Bulldozer. . . . .	14.25	e. ee
OPERATOR:Front End Loader. . . . .	11.13	e. ee
TRUCK DRIVER. . . . . \$ 10.49		e. 24

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate) .

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUMØ198-ee5 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers



<https://www.wdol.gov/wdol/scafiles/davisbacon/TX88.dvb?v=O>

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-@07 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-OI0 98/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

\* an existing published wage determination \* a survey underlying a wage determination \* a Wage and Hour Division letter setting forth a position on a wage determination matter \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2. ) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor 200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (see 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator U.S. Department of Labor 200  
Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board) . Write to:

Administrative Review Board U.S. Department of  
Labor 20 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF DECISION



Certification Regarding Lobbying for  
Contracts, Grants, Loans, and Cooperative Agreements

The undersigned \_\_\_\_\_ of \_\_\_\_\_ certifies, to the best of its knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of an Federal contract, grant, loan or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

## Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for Public Burden Disclosure)

<b>1. Type of Federal Action:</b> _____ a. contract _____ b. grant _____ c. cooperative agreement _____ d. loan _____ e. loan guarantee _____ f. loan insurance	<b>2. Status of Federal Action:</b> _____ a. bid/offer application _____ b. initial award _____ c. post-award	<b>3. Report Type:</b> _____ a. initial filing _____ b. material change
<b>4. Name and Address of Reporting Entity:</b> _____ Prime _____ Sub awardee _____ Tier _____, if Known:  <b>Congressional District, if known:</b>	<b>5. If Reporting Entity in No. 4 is Sub awardee, Enter Name and Address of Prime:</b>   <b>Congressional District if known:</b>	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>7. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>  \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____	
<b>Federal Use Only</b>	<b>Authorized for Local Reproduction</b> <b>Standard Form - LLL (Rev. 7-97)</b>	



INSERT CERTIFICATE OF LIABILITY INSURANCE

**INSERT CERTIFICATE OF LIABILITY INSURANCE**



## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that:

\_\_\_\_\_  
(Name of Contractor or Company)

\_\_\_\_\_  
(Address)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation / Partnership)

and \_\_\_\_\_  
(Name of Surety Company)

\_\_\_\_\_  
(Address)

hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_  
(Name of Recipient)

\_\_\_\_\_  
(Recipient's Address)

hereinafter called OWNER, in the penal sum of \$ \_\_\_\_\_

Dollars, \$ \_\_\_\_\_ in lawful money of the United States, for this payment of  
which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally,  
firmly by these presents.

THE CONFIDENTIALITY OF THIS OBLIGATION is such that whereas, the Principal entered into a  
certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_,  
a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
(Project Name)

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUB-  
CONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the  
WORK provided for in such contract, and any authorized extension or modification thereof, including all  
amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and  
tools, consumed or used in connection with the construction of such WORK, and all insurance premiums  
on said WORK, and for all labor, performed in such WORK whether by SUB-CONTRACTOR or  
otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no  
change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed

thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counter-parts, each on of (Number) which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal Secretary) By \_\_\_\_\_ (s)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Witness as to Surety)

By \_\_\_\_\_  
(Attorney in Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.



## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that:

\_\_\_\_\_  
(Name of Contractor or Company)

\_\_\_\_\_  
(Address)

a \_\_\_\_\_ hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety Company)

\_\_\_\_\_  
(Address)

hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_  
(Name of Grant Recipient)

\_\_\_\_\_  
(Grant Recipient's Address)

hereinafter called OWNER, in the penal sum of \$ \_\_\_\_\_

Dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, successors, and assigns, jointly and severally, firmly in these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER dated the \_\_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties in all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the

Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_  
counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_  
day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal Secretary) By \_\_\_\_\_(s)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Witness as to Surety)

By \_\_\_\_\_  
(Attorney in Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If PRINCIPAL/CONTRACTOR is Partnership, all partners should execute BOND.

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, \_\_\_\_\_  
\_\_\_\_\_ as PRINCIPAL, and \_\_\_\_\_, as SURETY  
are held and firmly bound unto (City) hereinafter called the "Local Public Agency", in the penal  
sum of \_\_\_\_\_ Dollars, (\$\_\_\_\_\_), lawful  
money of the United States, for the payment of which sum well and truly to be made, we bind  
ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally,  
firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted  
the Accompanying Bid, dated \_\_\_\_\_, for \_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, the Principal shall not withdraw said Bid within the period specified  
therein after the opening of the same, or, if no period be specified, within thirty (30) days after  
the said opening, and shall within the period specified therefor, or if no period be specified,  
within ten (10) days after the prescribed forms are presented to him for signature, enter into a  
written contract with the Local Public Agency in accordance with the Bid as accepted, and give  
bond with good and sufficient surety or sureties, as may be required, for the faithful performance  
and proper fulfillment of such contract; or in the event of the withdrawal of said Bid within the  
period specified, or the failure to enter into such Contract and give such bond within the time  
specified, if the Principal shall pay the Local Public Agency the difference between the amount  
specified in said Bid and the amount for which the local Public Agency may procure the required  
work or supplies or both, if the latter be in excess of the former, then the above obligation shall  
be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS THEREOF, the above parties have executed this instrument this \_\_\_\_\_ day of  
\_\_\_\_\_, the name and corporate seal of each corporate party being hereto  
affixed and these present signed by its undersigned representative, pursuant to authority of its  
governing body.

(SEAL)

(SEAL)

Attest:

By: \_\_\_\_\_



Affix  
Corporate  
Seal

Attest:

By: \_\_\_\_\_

Affix  
Corporate  
Seal

Attest:

By: \_\_\_\_\_

Countersigned

By \_\_\_\_\_

\* Attorney-in-Fact, State of Texas

#### CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the bid bond; that \_\_\_\_\_, who signed the said bond on behalf of the Principal was then \_\_\_\_\_ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested to, on behalf of said corporation by authority of its governing body.

Corporate  
Seal

Title: \_\_\_\_\_

\* Power-of-attorney for person signing for Surety Company must be attached to bond.

## Certificate of Construction Completion (COCC)

(Submit one for each Prime Construction Contract)

Grant Recipient: TxCDBG Contract No:

This is to certify that a final inspection of the project described below was conducted on the day of Contract was entered into on the day of between the city/county of and for the construction of

---

This is to further certify that:

1. The work has been completed in accordance with the plans and specifications and all amendments, change orders and supplemental agreements thereto.
2. The sum of \$\_\_\_\_\_, has been deducted from the final payment to the Contractor in accordance with any contract liquidated damages requirements, separate from any liquidated damages resulting from Davis-Bacon compliance.
3. All programmatic requirements have been met, all claims and disputes have been settled, all warranties have been received, and all liens have been released.
4. The Contractor has presented on behalf of itself and its sureties, satisfactory evidence that he or she will repair, replace and rectify any faulty workmanship and/or materials discovered in the work within a period of 12 months from this date, as provided in the Contract.
5. All bills for materials, apparatus, fixtures, machinery, labor, and equipment used in connection with the construction of this project have been fully paid.
6.

Amount of Original Contract	\$ _____
Cumulative Change Orders	\$ _____
Final Amount of Contract	\$ _____
Less Previous Payments	\$ _____
Less Deductions (from #2 above)	\$ _____
FINAL PAYMENT (Balance)	\$ _____
7. The Final Payment above is now due and payable.

Certified by the following Engineer, Contractor, and Chief Elected Official/Designee:

Engineer \_\_\_\_\_ Chief Elected Official/Designee \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

Firm \_\_\_\_\_ City / County \_\_\_\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm

09/01/2016



## CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

Locality: City of Kingsville, Texas

TxCDBG No: 7219012

Contractor: \_\_\_\_\_

Date: \_\_\_\_\_

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared, who being duly sworn, on oath, says that he is a duly authorized representative of \_\_\_\_\_ Contractor, and that all terms of the Contract for the completion of certain public works described as 2019 DOWNTOWN IMPROVEMENTS-KLEBERG AVENUE PROJECT; City of Kingsville, Texas have been satisfactorily completed and that ALL sums of money for payrolls, bills for material and equipment, and other indebtedness connected with the Work for the Owner or its property might in any way be responsible to the best of my knowledge and belief, have been paid or will be paid or otherwise satisfied within thirty days after receipt of final payment from the Owner, or within the period of time required by Article 601 f, Vernon's Civil Statutes. Payments not made in full at the time of this affidavit are listed below.

FINAL PAYMENTS pending as of this date hereof are:

None Pending

As Listed Below

INDIVIDUAL OR CO. NAME

MAILING ADDRESS

AMOUNT OWED


\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Affidavit must be signed by an individual owner or partner in partnership, or by a person authorized by by-laws or Board of Directors to sign for a corporation. If Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership. In the event subcontractors, laborers, or material suppliers have not been paid in full, the Contractor shall list hereon the amount owed and the name and address of each subcontractor, laborer, or material supplier to whom such payment is owed.

---

Sworn and Subscribed before me this, \_\_\_\_\_, day of \_\_\_\_\_ the  
\_\_\_\_\_, 20\_\_\_\_.

(SEAL)

---

Notary Public in and for Texas

## GENERAL CONDITIONS



# TDRA GENERAL CONTRACT CONDITIONS FOR CONSTRUCTION CONTRACT

## 1. Contract and Contract Documents

(a) The project to be constructed pursuant to this contract will be financed with assistance from the Texas Community Development Program (TCDP) and is subject to all applicable Federal, State, and local laws and regulations.

(b) The Plans, Specifications and Addenda shall form part of this contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth.

## 2. Definitions

Whenever used in any of the contract Documents, the following meanings shall be given to the terms here in defined:

(a) The term "Contract" means the Contract executed between the City of Kingsville, Texas, hereinafter called the Locality \_\_\_\_\_ and hereinafter called Contractor, of which these GENERAL CONDITIONS, form a part.

(b) The term "Project Area" means the area within which are the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.

(c) The term "Engineer" means LNV, Engineer in charge, serving the Locality with architectural or engineering services, his successor, or any other person or persons, employed by the Locality for the purpose of directing or having in charge the work embraced in this Contract.

(d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

## 3. Supervision by Contractor

(a) Except where the Contractor is an individual and gives his personal supervision to the work, the Contractor shall provide a competent superintendent, satisfactory to the Local Public Agency and the Engineer, on the work at all times during working hours with full authority to act for him. The Contractor shall also provide an adequate staff for the proper coordination and expediting of his work.

(b) The Contractor shall lay out his own work and he shall be responsible for all work executed by him under the Contract. He shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

#### 4. Subcontracts

(a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until he has verified the subcontractor(s) as eligible to participate in federally funded contracts.

(b) No proposed subcontractor shall be disapproved by the Owner except for cause.

(c) The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractor(s) and of persons either directly or indirectly employed by them.

(d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.

(e) Nothing contained in the Contract shall create any contractual relation between any subcontractor and the Locality.

#### 5. Fitting and Coordination of Work

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material suppliers engaged upon this Contract.

##### (a) Payments to Contractor

##### (b) Partial Payments

1. The Contractor shall prepare his requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for his approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount, to be retained until final payment and (2) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and, on the unit, prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such

materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.

2. Monthly or partial payments made by the Locality to the Contractor are moneys advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Locality. Such payments shall not constitute a waiver of the right of the Locality to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Locality in all details.

(c) Final Payment

1. After final inspection and acceptance by the Locality of all work under the Contract, the Contractor shall prepare his requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Agreement. The total amount of the final payment due the Contractor under this contract shall be the amount computed as described above less all previous payments.

2. The Locality, before paying the final estimate, shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor, if the Locality deems it necessary in order to protect its interest. The Locality may, if it deems such action advisable, make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.

3. Any amount due the Locality under Liquidated Damages, shall be deducted from the final payment due the contractor.

(d) Payments Subject to Submission of Certificates

Each payment to the Contractor from the Locality is subject to submission of all written certifications required of the Contractor and his subcontractors.

(e) Withholding Payments

The Locality may withhold from any payment due the Contractor whatever is deemed necessary to protect the Locality, and if so elects, may also withhold any



amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them.

The foregoing provisions shall be construed solely for the benefit of the Locality and will not require the Locality to determine or adjust any claims or disputes between the Contractor and his subcontractors or material dealers, or to withhold any moneys for their protection unless the Locality elects to do so. The failure or refusal of the Locality to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

## 6. Changes in the Work

(a) The Locality may make changes in the scope of work required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders must be approved by the TCDP staff prior to execution of same.

(b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Locality authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.

(c) If applicable unit prices are contained in the Agreement, the Locality may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%) for counties or twenty-five percent (25<sup>00</sup>) for cities.

(d) Each change order shall include in its final form:

1. A detailed description of the change in the work.
2. The Contractor's proposal (if any) or a confirmed copy thereof.
3. A definite statement as to the resulting change in the contract price and/or time.
4. The statement that all work involved in the change shall be performed in accordance

with contract requirements except as modified by the change order. 5. The procedures as outlined in this Section for a unit price contract also apply in any lump sum contract.

## 7. Claims for Extra Cost

- (a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the Locality, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.
- (b) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to the Locality and work shall not proceed except at the Contractor's risk, until written instructions have been received by him from the Locality.
- (d) If, on the basis of the available evidence, the Locality determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

## 8. Termination, Delays. and Liquidated Damages

### (a) Right of the Locality to Terminate Contract for Convenience

Locality may at any time and for any reason terminate Contractor's services and work at Locality's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows:

- (1) the actual cost of the work completed in conformity with this Agreement; plus,
- (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by Locality; (3) plus ten percent (10<sup>0</sup> 0) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any

payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against Locality for any additional compensation or damages in the event of such termination and payment.

(b) Right of the Locality to Terminate Contract for Cause.

In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Locality may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease, and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Locality shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Locality may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to the Locality for any excess cost incurred. In such event the Locality may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

(c) Liquidated Damages for Delays.

If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the Locality as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$200.00 for each calendar day of delay, until the work is completed. The Contractor and his sureties shall be liable to the Locality for the amount thereof.

(d) Excusable Delays.

1. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to;



2. Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;

3. Any acts of the City;

4. Causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other contract with the Locality, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.

5. Provided, however, that the Contractor promptly notifies the Locality within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the Locality shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the Locality shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

#### 9. Assignment or Novation

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Locality; provided, however, that assignments to banks or other financial institutions may be made without the consent of the Locality. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

#### 10. Disputes

(a) All disputes arising under this Contract or its interpretation except those disputes covered by FEDERAL LABOR STANDARDS PROVISIONS whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall, within ten (10) days of commencement of the dispute, be presented by the Contractor to the Locality for decision. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim

will be considered only for a period commencing ten (10) days prior to the receipt of the Locality.

(b) The Contractor shall submit in detail his claim and his proof thereof.

(c) If the Contractor does not agree with any decision of the Locality, he shall in no case allow the dispute to delay the work but shall notify the Locality promptly that he is proceeding with the work under protest.

#### 11. Technical Specifications and Drawings

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa, shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Drawings shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Locality, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

#### 12. Shop Drawings

(a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in five (5) copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.

(b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.

(c) If a shop drawing is in accordance with the contract or involves only a minor adjustment in the interest of the Locality not involving a change in contract price or time; the engineer may approve the drawing. The approval shall not relieve the Contractor from his responsibility for adherence to the contract or for any error in the drawing.

### 13. Requests for Supplementary Information

It shall be the responsibility of the Contractor to make timely requests of the Locality for any additional information not already in his possession which should be furnished by the Locality under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section.

### 14. Materials and Workmanship

(a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.

(b) The Contractor shall furnish to the Locality for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.

(c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.

(d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.

(e) The Locality may require the Contractor to dismiss from the work such employee or employees as the Locality or the Engineer may deem incompetent, or careless, or insubordinate.

## 15. Samples, Certificates and Tests

(a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond.

No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

(b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.

(c) Approval of any materials shall be general only and shall not constitute a waiver of the Locality's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.

(d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:

1. The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
2. The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
3. The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
4. The Locality will pay all other expenses.



## 16. Permits and Codes

(a) The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers.

Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the Locality. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the Locality will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.

(b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to the Locality.

(c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.

(d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Improvements contained in this Contract.

(e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.

(f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by the Locality, shall moisten the bank and surrounding area to prevent a dusty condition.

## 17. Care of Work

(a) The Contractor shall be responsible for all damages to person or property that occur as a result of his fault or negligence in connection with the prosecution of the work and

shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

(b) The Contractor shall provide sufficient competent watchmen, both day and night, including Saturdays, Sundays, and holidays, from the time the work is commenced until final completion and acceptance.

(c) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the Locality is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the Locality.

(d) The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and he shall at his own expense completely repair any damage thereto caused by his operations.

(e) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property Locality or other party before the commencement of any work. The Contractor shall indemnify and save harmless the Locality from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Locality may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

## 18. Accident Prevention

(a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

(b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.

(c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Locality with reports concerning these matters.

(d) The Contractor shall indemnify and save harmless the Locality from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.

(e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. House Bill 1569 concerning trench safety legislation are made a part of these contract documents for Contractor's reference. All OSHA Standards for trench safety must be adhered to by the Contractor.

(f) The Contractor shall at all time conduct his work in such a manner as to insure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of the Owner, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the Locality at the expense of the Contractor.

#### 19. Sanitary Facilities

The Contractor shall furnish, install and maintain ample sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

#### 20. Use of Premises

(a) The Contractor shall confine his equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the Locality, and shall not unreasonably encumber the site or public rights of way with his materials and construction equipment.

(b) The Contractor shall comply with all reasonable instructions of the Locality and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

#### 21. Removal of Debris, Cleaning, Etc.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris and unused materials provided for work, and put the whole site of the work and public rights of way in a neat and clean condition.

## 22. Inspection

(a) All materials and workmanship shall be subject to inspection, examination, or test by the Locality and Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs.

The Locality shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the Locality may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any Monies which may be due the Contractor, without prejudice to any other rights or remedies of the Locality.

(b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by the Locality will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.

(c) The Contractor shall notify the Locality sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the Locality, the Contractor shall uncover for inspection and recover such facilities at his own expense, when so requested by the Locality.

(d) Should it be considered necessary or advisable by the Locality at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements



contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.

(f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the Locality or its agents shall relieve the Contractor or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

## 23. Review by Locality

The Locality and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Locality through its authorized representatives or agents.

## 24. Final Inspection

When the Improvements included in this Contract are substantially completed, the Contractor shall notify the Locality in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The Locality will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable.

## 25. Deduction for Uncorrected Work

If the Locality deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and the Locality and subject to settlement, in case of dispute, as herein provided.

## 26. Insurance

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Locality. Each insurance carrier shall be licensed to operate in the State of Texas and listed with the Texas State Board of Insurance.

(a) Definitions: Certificate of coverage (certificate). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC81 , TWCC-82, TWCC-83, OR TWCC 84), showing statutory

workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in para. 406.096) includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees.

This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food & beverage vendors, office supply deliveries, and delivery of portable toilets.

(b) The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.

(c) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

(d) If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

(e) The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(f) The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(g) The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(h) The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

(i) The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.00(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(1) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period. If the coverage period shown on the current certificate of coverage ends during the duration of the project;

(2) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- (3) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (4) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- a. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a selfinsured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
  - b. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

A. Compensation Insurance:

The Contractor shall procure and shall maintain during the life of this Contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.

B. Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:

The Contractor shall procure and shall maintain during the life of this Contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts:

Public Liability: \$100,000 for injuries to 1 person. \$300,000 for each occurrence. In addition to these requirements, the Locality requires an additional



Property Damage: \$100,000.

Automobile Property Damage:\$ 100,000.

Automobile Public Liability: \$250,000 for injuries to 1 person. \$500,000 for each occurrence.

NOTE: Automobile insurance shall cover all automobiles and trucks owned by the CONTRACTOR.

For terms covered under this Contract, City of Kingsville, 400 W. King Avenue, Kingsville, Texas 78363 and LNV, 801 Navigation, Suite 300, Corpus Christi, Texas 78408 shall be named as additional insured with respect to general liability.

Proper certificates of insurance shall be filed with the ENGINEER prior to the execution of the Contract.

c. Proof of Insurance:

The Contractor shall furnish the Locality with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by the Locality.

28. Warranty of Title

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed by him to the Locality free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the Contractor in the hands of the Locality. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

## 29. Warranty of Workmanship and Materials

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by the Locality or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of twelve (12) months from the date of final acceptance of the work.

## 30. For contracts > \$150k Clean Air Act and the Federal Water Pollution Control Act

a) In compliance with the Clean Air Act, as amended, 42 U.S.C. Sec. 7401-767 Iq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1387, and the regulations of the Environmental Protection Agency with respect thereto, the Contractor agrees that:

(1) Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.

(2) He will comply with all requirements of Section 114 of the Clean Air Act, as amended.

(3) Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

b) If the Contractor encounters existing material on sites owned or controlled by the or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Locality. The Locality will be responsible for testing for and removal or disposition of hazardous materials on sites owned or controlled by the Locality. The Locality may suspend the work, wholly or in part during the testing, removal or disposition of hazardous materials on sites owned or controlled by the Locality.

## 31. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

a) The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer;

recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

d) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.

f) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in

accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

i) The goals and timetables for minority and female participation, are as follows:

Goals for Minority Participation Goals for Female Participation 41.7<sup>0</sup>/0 for Each Trade 6.9% in Each Trade

j) These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area.

k) The Contractor shall take affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions.

l) Contractors are encouraged to participate in voluntary associations which assist in fulfilling their affirmative action obligations.

m) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.

n) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.



o) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts.

p) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

### 32. Affirmative Action for Handicapped Workers

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, promotion, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

### 33. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

### 34. The Provision of Local Training, Employment, and Business Opportunities

a) To the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

b) The Contractor will include this clause in every subcontract for work in connection with the project.

### 35. Non-Segregated Facilities

The Contractor certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees any segregated facilities at any of his establishments or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating

areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

36. Job Offices

- a) The Contractor and his subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. The Locality shall be consulted with regard to locations.
- b) Upon completion of the improvements, or as directed by the Locality, the Contractors shall remove all such temporary structures and facilities from the site and leave the site of the work in the condition required by the Contract.

37. Partial Use of Site Improvements

- a) The Locality may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:
- b) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- c) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- d) The period of guarantee stipulated in the Section 132 hereof shall not begin to run until the date of the final acceptance of all work which the Contractor is required to construct under this Contract.

38. Contract Documents and Drawings

The Local Public Agency will furnish the Contractor without charge five (5) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

### 39. Contract Period

The work to be performed under this contract shall commence within the time stipulated by the Locality in the Notice to Proceed and shall be fully completed within the time stipulated in the Contractor's bid.

### 40. Liquidated Damages

Since the actual damages for any delay in completion of the work under this contract are impossible to determine, the Contractor and his Sureties shall be liable for and shall pay to the Locality the sum of Two Hundred Dollars (\$200.00) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for completion.

### 41. Local Program Liaison

For purposes of this Agreement, the City Mayor or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

### 42. Access to Information

a) The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), the Locality, and the Texas State Auditor's Office, or any of their authorized representatives, shall have access to any books, documents, papers or other records of the Contractor which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to close out the Locality's TxCDBG contract with TDA. b) Contractor shall include the substance of this clause in all subcontracts it awards.

### 43. Records Retention

a) The Contractor shall retain all required records for three years after the Locality makes its final payment and all pending matters are closed.

b) Contractor shall include the substance of this clause in all subcontracts it awards.

### 44. Resolution of Program Non-Compliance and Disallowed Costs

In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program

requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Contract and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

#### 45. Compliance with Davis-Bacon Act

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the of 23 applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Antikickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached as General Decision Number: TX 160120 and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Locality for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made, or costs reasonably anticipated under Section I (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5 (a) (l) (iv) of Title 29, Code of Federal Regulations. Also, for the purpose of this clause, regular contributions made, or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period. The Contractor and its subcontractors shall not, by any means, induce any person employed in the construction, completion, or repair of public work, give up any part of the compensation to which he or she is otherwise entitled. The Locality must report all suspected or reported violations to TDA.



46. Conflicts of interest.

- a) Governing Body. No member of the governing body of the Locality and no other officer, employee, or agent of the Locality, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the Locality, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Firm shall take appropriate steps to assure compliance.
- b) Other Local Public Officials. No other public official, who exercises any actions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the TxCDBG award between TDA and the Locality, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Contractor shall take appropriate steps to assure compliance.
- c) The Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and the Locality or this Contract. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the TxCDBG award between TDA and the Locality or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

47. Debarment and Suspension (Executive Orders 12549 and 12689)

The Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (3 CFR Pan 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235). The term "principal" for purposes of this Contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

48. Procurement of Recovered Materials

The Contractor shall comply with section 6002 of the Solid Waste Act, as amended by the Resource Conservation and Recovery Act, procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest

percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000 as long as such procurement is economically feasible.

49. For Contracts that exceed \$100,000 Anti-Lobbying

Contractor shall file the required certification: The undersigned certifies, to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certain and disclose accordingly.

50. For Contracts > \$100K Overtime Requirements

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.

51. Section 504 Rehabilitation Act of 1973 as amended

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination,

including discrimination in employment, under any program or activity receiving federal financial assistance.

52. Age Discrimination Act of 1975.

The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

53. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 170111 (section 3).

The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or

knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

f) Noncompliance with HUDs regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

#### 54. Gender Neutral - Gender References

When necessary, unless the context clearly requires otherwise, any gender-specific or gender-neutral term in this Contract (for example, he, she, it, etc.) is to be read as referring to any other gender or to no gender.

#### 55. Reporting Requirements

The Contractor shall comply with the requirements and regulations pertaining to reporting (24 CFR 85.36 (i) (7)).

#### 56. Patent Rights

The Contractor shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (24 CFR 85.36 (i) (8)).

#### 57. Copyrights and Rights in Data

The Contractor shall comply with the requirements and regulations pertaining to copyrights and rights in data. (24 CFR 85.36 (i) (9)).

58. Energy Efficiency

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).

59. Verification No Boycott Israel.

As required by Chapter 2270, Government Code, CONTRACTOR hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

60. Foreign Terrorist Organizations.

Pursuant to Chapter 2252, Texas Government Code, [Company] represents and certifies that, at the time of execution of this Agreement neither [Company], nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.



## MNORITY/FEMALE GOALS AND TMETABLES

The female employment goal is effective as of April 1980 and is currently 6.9<sup>0</sup>0. The percentages for minority participation in Texas are:

### Texarkana Area:

Texarkana & Bowie Co.	19.7
Non-MSA Counties of Camp, Cass, Lamar, Morris, Red River & Titus	20.2

### Tyler-Longview Area:

Longview, Gregg Co. & Harrison Co.	22.8
Tyler & Smith Co.	23.5
Non-MSA Counties of Anderson, Angelina, Cherokee, Henderson, Marion, Nacogdoches, Panola, Rusk, San Augustine, Shelby, Upshur & Wood	22.5

### Beaumont-Port Arthur Area:

Beaumont, Port Arthur, Orange, Hardin Co., Jefferson Co., & Orange Co.	22.6
Non-MSA Counties of Jasper, Houston, Newton, Sabine, & Tyler	22.6

### Houston Area:

Bryan, College Station & Brazos Co.	23.7
Galveston, Texas County & Galveston Co.	28.9
Houston, Brazoria Co., Fort Bend Co., Harris Co., Liberty Co., Montgomery Co. & Waller Co.	27.3
Non-MSA Counties of Austin, Burleson, Calhoun, Chambers, Colorado, DeWitt, Fayette, Goliad, Grimes, Jackson, Lavaca, Leon, Madison, Matagorda, Polk, Robertson, San Jacinto, Trinity, Victoria, Walker, Washington, & Wharton	27.4

### Austin Area:

Austin, Hays Co., Travis Co., & Williamson Co.	24.1
Non-MSA Counties of Bastrop, Blanco, Burnet, Caldwell, Lee & Llano	24.2

### Waco. Killeen. Temple Area:

Killeen, Temple, Bell Co. & Coryell Co.	16.4
Waco & McLennan Co.	20.7
Non-MSA Counties of Bosque, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, Milam & Mills	18.6

### Dallas Fort Worth Area:

Dallas, Fort Worth, Collin Co., Dallas Co., Denton Co., Ellis Co., Hood Co., Johnson Co., Kaufman Co., Parker Co., Rockwall Co., Tarrant Co. & Wise Co.	18.2
Sherman, Denison & Grayson Co.	9.4
Non-MSA Counties of Cooke, Delta, Erath, Fannin, Franklin, Hopkins, Hunt, Jack, Montague, Navarro, Palo Pinto, Rains, Somervell, & Van Zandt	17.2

Wichita Falls Area:

Wichita Falls, Clay co. & Wichita co.	12.4
Non-MSA Counties of Archer, Baylor, Cottle, Foard, Hardeman, Wilbarger & Young	11.0

Abilene Area:

Abilene, Callaghan Co., Jones Co. & Taylor Co.	11.6
Non-MSA Counties of Brown, Coleman, Comanche, Eastland, Fisher, Haskell, Kent, Knox, Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall & Throckmorton	10.9

San Angelo Area:

San Angelo & Tom Green Co.	19.2
Non-MSA Counties of Coke, Concho, Crockett, Irion, Kimble, McCullough, Mason, Menard, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton & Terrell	20.0

San Antonio Area:

Laredo & Webb co.	87.3
San Antonio, Bexar Co., Comal Co. & Guadalupe Co.	47.8
Non-MSA Counties of Atascosa, Bandera, Dimmit, Edwards, Frio, Gillespie, Gonzales, Jim Hogg, Karnes, Kendall, Kerr, Kinney, La Salle, McMullen, Maverick, Medina, Real, Uvalde, Val Verde, Wilson, Zapata & Zavala	49.4

Corpus Christi Area:

Corpus Christi, Nueces Co. & San Patricio Co.	41.7
Non-MSA Counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak & Refugio	44.2

Brownsville. McAllen. Harlingen Area:

Brownsville, Harlingen, San Benito & Cameron Co.	71.0
McAllen, Pharr, Edinburg & Hidalgo Co.	72.8
Non-MSA Counties of Starr & Willacy	72.9

Odessa Midland Area:

Midland & Midland Co.	19.1
Odessa & Ector Co.	15.1
Non-MSA Counties of Andrews, Crane, Glasscock, Howard, Loving, Martin, Pecos, Reeves, Upton, Ward & Winkler	18.9

El Paso Area:

El Paso & El Paso co.	57.8
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Non-MSA Counties of Brewster, Culbertson, Hudspeth, Jeff Davis & Presidio Lubbock 49.0  
Area:

Lubbock & Lubbock Co. 19.6

Non-MSA Counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines,  
19.5 Garza, Hale, Hockley, King, Lamb, Lynn, Motley, Terry & Yoakum

Amarillo Area:

Amarillo, Potter Co. & Randall Co. 9.3 Non-MSA Counties of Armstrong, Briscoe, Carson, Castro,  
Childress, Collingsworth, 11.0 Dallam, Deaf Smith,  
Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree,  
Oldham, Parmer, Roberts, Sherman, Swisher, & Wheeler

## SPECIAL CONDITIONS

## SPECIAL CONDITIONS

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### DESCRIPTION OF WORK:

"2019 DOWNTOWN IMPROVEMENTS - KLEBERG AVENUE PROJECT."

The Contractor shall furnish all labor, materials, equipment, tools, services and supervision necessary to perform all the work as described in the Proposal and shall deliver the work complete in all respects and in full accordance with the Contract Documents. All incidental services and materials which may be reasonably inferred as necessary to accomplish the intended end result shall be provided by the Contractor whether or not specifically shown on the Drawings or itemized in the Specifications.

### CONSTRUCTION SEQUENCE:

Within ten (10) days after receiving a written "Notice to Proceed" the Contractor will be expected to pursue continuous progress of the overall Project from beginning of the work to completion. The Contractor will, in general, be left to schedule his work as he sees fit in so far as the Owner remains satisfied that an orderly progress is being made on the project to the extent of finishing within the stated contract time.

The Contractor will, however, be required to coordinate the sequencing of this work with the Owner and various utility companies, and any other individual or entity which may suffer inconvenience or damage as a result of a lack of cooperation in the construction of the project.

### TIME OF COMPLETION:

Construction time is to start ten (10) days after receipt of a written "Notice to Proceed". All items of work contemplated in these Specifications and the accompanying drawings are to be fully complete in the number of days specified in the bid proposal. After the notification of final completion and a final inspection, Contractor shall have thirty (30) days to remedy any incomplete or defective work.

### PROJECT MEETINGS:

Prior to starting work, the Contractor shall attend a pre-construction conference to review the Contractor's schedules, to establish procedures for processing applications for payment, and to establish a working understanding between Owner, Engineer and Contractor. Representatives of all parties shall be in attendance. Other meetings will be scheduled during the construction as need dictates.

### LIQUIDATED DAMAGES FOR DELAY:

The Contractor agrees that a delay in substantial completion of the project beyond the total number of days anticipated for substantial completion plus such extensions to the allotted time as may be provided for in the General Conditions shall cause a damage to the Owner and that the Owner may withhold, permanently, from the Contractor's total compensation a sum of two hundred dollars (\$200.00) per calendar day as the stipulated damages for such delay.

### GUARANTEES:

The Contractor shall provide a warranty which shall guarantee work against defective materials and workmanship for a period of one (1) year from the date of issue of certificate of acceptance. Neither final



acceptance nor final payment or any provision in the contract documents will relieve Contractor of above guarantee.

Failure to repair or replace defect upon notice entitles Owner to repair or replace same and recover reasonable cost thereof from the Contractor and/or his surety.

#### PERMITS AND RIGHT-OF-WAY:

The Owner will provide right-of-way for the purpose of construction without cost to the Contractor by securing permits in areas of public dedication or by obtaining easements across privately owned property. It shall be the responsibility of the Contractor prior to the initiation of construction on easements through private property, or upon areas of public dedication, to familiarize himself with the requirements of the pertinent easement or permit and to abide by all of the stated terms of such easements or permits. The Contractor shall give notice of intent to begin construction on privately owned property or permitted areas as required by the relevant easement or permit but in no case less than 48 hours before commencing work.

#### MATERIALS AND EQUIPMENT:

Incorporate into work only new materials and equipment of domestic manufacture unless otherwise designated. Store these materials and equipment in manner to protect them from damage.

#### REPAIR OF DAMAGE:

Driveways, curbs, culverts, yards or items of private or public ownership, if damaged during the course of construction of this project, shall be, to the greatest extent practicable, repaired or replaced to the condition of such items before their being damaged, at no cost.

#### SITE MAINTENANCE AND CLEAN-UP:

Maintain work site during construction neat and free of trash, rubbish or other debris. In cleanup operations, remove from site temporary structures, rubbish and waste materials, and leave site in a neat and presentable condition throughout. Dispose of excavated material beyond that which is needed to bring site to required final elevations.

#### MEASUREMENT AND PAYMENT:

Estimated quantities shown in the Contract Documents are provided solely for the purpose of allowing a uniform comparison of submitted bids. Payment will be made on either the basis of actual measured quantities or a lump sum as may be relevant to the particular item. For those items for which payment is based on actual measured quantities, the Contractor shall verify all measurements at the site and shall be responsible for the correctness of same. Unit prices shall then be used to calculate payment. Methods of measurement shall be given in the Technical Specifications for each measured item.

#### RETAINAGE:

The Owner will retain from the Contractor's monthly estimate and request for payment an amount equal to 10% of the invoice amount. This 10% shall be retained by the Owner until final acceptance of the total project and then paid to the Contractor.

#### PAYMENT FOR MATERIALS ON SITE:

Contractor shall present to the Owner with his monthly estimate of production and request for payment a list of all material delivered to the project site, but not installed, with the total invoice cost of that material and the Owner shall pay to the Contractor the invoice cost of such material as has been verified by the Engineer to be "on site", less a 10<sup>00</sup> retainage. "On site" shall mean on or immediately adjacent to the work area or point of material installation, or a central storage yard or office area which has been set up for the project in the immediate project area. This does not include material in transit to the job site, material stored in yards or areas located in other towns, or materials stored in a manufacturer's warehouse, even though Contractor may have been invoiced for such material. Materials considered as consumables, i.e. chlorine for disinfection, testing pipe and equipment, etc., shall not be considered as material on-site, and only principle material items shall be considered for payment for material on-site.

#### STATE SALES TAX:

The improvements proposed for construction under the terms of these Contract Documents shall become a part of the utility system of the Owner. The Owner qualifies as an exempt organization under the Limited Sales Excise Tax Rules and Regulations of the State of Texas. Since the Owner and the Contractor shall be exempt from the state sales tax, the state sales tax shall not be included in the Bid.

Prior to the execution of the Contract, the Contractor shall obtain a Limited Sales Tax Permit and shall show evidence of this permit when signing the Contract. The Contractor shall then issue Resale Certificates in lieu of payment of the sales tax, on material purchased for incorporation into the project. These instructions are in strict compliance with the State Sales Tax Code, Section 151.31 1. The Contractor is assumed to be fully aware of the sales tax regulations and agrees to cooperate fully with the Owner claiming its lawful exemption from the state sales tax.

#### TRAFFIC CONTROL:

It will be the Contractor's responsibility to adequately provide for the safety of the public during the course of the construction of the project to include flagmen. No separate compensation will be paid to the Contractor for traffic control.

#### MATERIALS TESTING:

The Owner will provide for the initial testing of materials to be incorporated into the project to such extent as may be desired including the testing of concrete samples taken at the time of concrete placement. The Contractor shall be responsible for supplying samples of materials as may be required for testing. Any retesting required shall be at the Contractor's expense as stated in the General Conditions.

#### WATER FOR CONSTRUCTION:

Water used for the mixing of concrete, jetting or flooding trenches, or testing, or any other purposes incidental to this project, will be furnished by the Contractor. If water is obtained from the Owner's water supply, the Contractor shall make the necessary arrangements for securing and transporting such water and shall take such water in a manner and at such times that will not produce a harmful drain or decrease pressure in the Owner's water system. There will be no charge to Contractor for water used in the construction of this project.

#### LINES AND GRADES:

The Engineer will set control stakes (both horizontal and vertical), but detailed construction staking shall be the full responsibility of the Contractor.

#### LOCATION OF AND DAMAGE TO EXISTING UTILITIES:

The Contractor shall be solely responsible for all above ground utilities, structures, and appurtenances in regard to protection and replacement or repair of same. The Contractor shall also be solely responsible for visible below ground utilities, structures and appurtenances that may be accurately located by removing manhole covers, valve box covers, and other access point coverings, with a reasonable effort on the part of two workmen, using hand tools for such removal and inspection. The cost of protecting, replacing, or repairing the utilities, structures, and appurtenances covered by this paragraph shall be borne solely by the Contractor and shall be included in the prices bid for the various affected items in the Contract.

The Contractor shall notify all private and public utilities 48 hours prior to performing any work in the vicinity of said utilities. Such 48-hour notice shall not include Saturdays, Sundays and holidays.

In those instances where faults, caverns or subsidence zones are encountered during construction, the design engineer will make the necessary adjustments and/or modifications to ensure proper installation. This subject is further defined in the detailed specification list which governs this project.

#### CONTRACTORS FIELD ADMINISTRATION STAFF:

The Contractor shall employ for this project, as its field administration staff, superintendents and foremen who are careful and competent and acceptable to the Owner. The criteria upon which the Owner shall make this determination shall include the following:

- A. The superintendent shall have at least five (5) year's experience in the day-to-day field management and oversight of projects of a similar size and complexity to the project which is the subject of this Contract. This experience shall include, but is not limited to, scheduling of manpower and materials, safety, coordination of subcontractors, and familiarity with the submittal process, federal and state wage rate requirements, and contract close-out procedures.
- B. The foreman shall have at least five (5) year's experience in oversight and management of the work of various subcontractors and crafts. Should the scope of the project be such that a foreman is not required, the Contractor's superintendent shall assume the responsibilities of a foreman.

Documentation concerning these matters shall be reviewed by the Owner. The Contractor's field administration staff, and any subsequent substitutions or replacements thereto, shall be approved by the Owner in writing prior to such superintendent or foreman assuming responsibilities on the project.

Such written approval of field administration staff is a prerequisite to the Owner's obligation to execute a contract for this project. If such approval is not obtained, the award may be rescinded. Further, such written approval is also necessary prior to a change in field administration staff during the term of this Contract. If the Contractor fails to obtain prior written approval of the Owner concerning any substitutions or replacements in its field administration staff for this project, the award may be rescinded. Further, such written approval is also necessary prior to a change in field administration staff during the term of this Contract. If the Contractor fails to obtain prior written approval of the Owner concerning any substitutions or replacements in its field administration staff for this project during the term of the Contract, such a failure will constitute a basis to annul the Contract.

#### CHARACTER OF WORKMEN AND CONDITION OF EQUIPMENT:

The Contractor shall employ such superintendents, foremen, and workmen as are careful and competent and the Engineer may demand the dismissal of any person or persons employed by the Contractor, in, about or on the work who shall misconduct himself or be incompetent or negligent in the proper performance of his or their duties or neglect or refuse to comply with the directions of the Engineer, and such person or persons shall not be employed thereon again without the written consent of the Engineer. All workmen shall have sufficient skill and experience to perform properly the work assigned them.

The Contractor shall furnish such equipment as is considered necessary for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools and machinery used for handling materials and executing any part of the work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment on any portion of the work shall be such that no injury to the work or adjacent property will result from its use.

#### AS-BUILT DRAWINGS:

Contractor shall maintain daily a set of "As-Built" drawings detailing the location and depths of new and existing utilities. The completed set of "As-Built" shall be submitted to the ENGINEER at the completion of the project.

#### TEMPORARY PROJECT SIGNAGE:

All TxCDBG construction projects utilizing TxCDBG funding must have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the community as directed by the owner. A photo of this signage must be submitted to TDA prior to the release of construction funds.

Requirements of temporary signage include:

- placement in a prominent visible public area that is not blocked or obscured; construction of durable materials; minimum size of 12" x 18"
- with lettering no smaller than 1 2"; Required text (or similar):

"This project is funded by the Texas Department of Agriculture, to strengthen and enhance the quality of life in smaller and rural communities with funds allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant Program."

Temporary signage may be reused for future TxCDBG projects as appropriate.

Grant Works can provide a temporary sign meeting the minimum requirements at the preconstruction conference, upon request.

#### PROJECTS REQUIRING PERMANENT SIGNAGE:

Permanent signage identifying the location as a TxCDBG-funded project is required for any TxCDBG funded public buildings, park areas, or other structures open to the public, in addition to commercial facilities funded through the TCF Real Estate program. Some examples of projects requiring permanent signage include community centers, parks recreation facilities, fire stations, and significant improvements to existing facilities. Project signage is an eligible construction cost.

Requirements of permanent signage include:

●placement in a prominent visible public area that is not blocked or obscured; o  
construction of permanent materials; ● minimum size of 12" x 18" with lettering no  
smaller than 1 2"; o Required text:

"This project is funded by the Texas Department of Agriculture, to strengthen and enhance the quality of  
life in smaller and rural communities with funds allocated by the United States Department of Housing  
and Urban Development through the Community Development Block Grant Program."

RECOMMENDED ADDITIONAL CONDITION:

Payment under this contract must be processed through the Texas Department of Agriculture. Receipt of  
payment from the Grant Recipient will take at least 45 days from the time of pay estimate approval by the  
project engineer.



## **SAMPLE FORMS**

# CONTRACTORS LOCAL OPPORTUNITY PLAN

---

\_\_\_\_\_ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the City of Kingsville, Texas.

- A. To ascertain from the Locality's TDRA program official the exact boundaries of the project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the City the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within and servicing the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this plan in all bid documents and to require all bidders on subcontracts to submit an affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To ensure that subcontracts (greater than \$ 10,000), which are typically let on a negotiated rather than a bid basis in areas other than the covered project area, are also let on a negotiated basis, whenever feasible, in a covered project area.
- F. To formally contact unions, subcontractors, and trade associations to secure their cooperation in this effort.
- G. To ensure that all appropriate project area business concerns are notified of pending sub contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this plan.
- J. To maintain records concerning the amount and number of contracts, subcontracts, and purchases which contribute to objectives.
- K. To maintain records of all projected work force needs for all phases of the project by occupation, trade, skill level, and number of positions and to update these projections based on the extent to which hiring meets these Local Opportunity objectives.

As officer and representative of \_\_\_\_\_, We the undersigned have read and fully agree to this Plan and become a party to the full implementation of the program and its provisions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **STATEMENT OF BIDDER'S QUALIFICATIONS**

All questions must be answered, and the data given must be clear and comprehensive. **This statement must be notarized.** If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he/she desires.

Date: \_\_\_\_\_

Bidder (Legal Name of Firm): \_\_\_\_\_

Date Organized: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Date Incorporated: \_\_\_\_\_

Federal ID Number \_\_\_\_\_

Number of Years in contracting business under present name \_\_\_\_\_

List all other names under which your business has operated in the last 10 years:

\_\_\_\_\_  
\_\_\_\_\_

### **Work Presently Under Contract:**

<u>Contract</u>	<u>Amount \$</u>	<u>Completion</u>	<u>Date</u>
-----------------	------------------	-------------------	-------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Type of work performed by your company: \_\_\_\_\_

Total Staff employed by Firm (Break down by Managers and Traders on separate sheet):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have you ever failed to complete any work awarded to you? ☐ Yes ☐ No

(If yes, please attach summary of details on a separate sheet. Include brief explanation of cause and resolution)

Have you ever defaulted on a contract? ☐ Yes ☐ No

(If yes, please attach summary of details on a separate sheet.)

Has your organization had any disbarments or suspensions that have been imposed in the past five years or that was still in effect during the five-year period or is still in effect? ☐ Yes ☐ No

(If yes, list and explain; such list must include disbarments and suspensions of officers, principals, partners, members, and employees of your organization.)

List the projects most recently completed by your firm (include project of similar importance):

Project	Amount \$	Mo/Yr. Completed

Major equipment available for this contract:


Are you in compliance with all applicable EEO requirements? ☐ Yes ☐ No  
(If no, please attach summary of details on a separate sheet.)

#### Bank References

Address: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Credit Available: \$ \_\_\_\_\_

Has the firm or predecessor firm been involved in a bankruptcy or reorganization? ☐ Yes ☐ No  
(If yes, please attach summary of details on a separate sheet.)

List on a sheet attached here to all judgements, claims, arbitration proceedings, or suits pending or outstanding against bidder over the last five (5) years with amount of claim and brief description.

List on a sheet attached here to all lawsuits or requested arbitration with regard to constitution contracts which bidder has initiated within the last five (5) years and brief explanation of claim and outcome.

Attach resume(s) for the principle member(s) of your organization, including the offers as well as the proposed superintendent for the project.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Company Name

Notary Statement:

\_\_\_\_\_, being duly sworn, says that he/she is the \_\_\_\_\_  
Position/Title \_\_\_\_\_ of \_\_\_\_\_ (Frim Name), and hereby  
swears that the answers to the foregoing questions and all questions therein contained are true and correct.  
He/She hereby authorizes and requests any person, firm, or corporation to furnish any information requested  
City of \_\_\_\_\_ in verification of the recitals comprising this Statement of Bidder's  
Qualifications.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.



## **CONFLICT OF INTEREST QUESTIONNAIRE**

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code §176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code §176.003 (a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code §176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity or a family member of the officer, described by Section(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity, or

- (2) the date the vendor becomes aware:

(C) of an employment or other business relationship with a local government officer, or a family member of the described by Subsection (a);

(D) that the vendor has given one or more gifts described by Subsection (a); or (C) of a family relationship with a local government officer.

**CONFLICT OF INTEREST QUESTIONNAIRE****FORM CIQ****For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001 (I-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**OFFICE USE ONLY**

Date Received

**1. Name of person doing business with local governmental entity.****RFB / RFP / Contract #****2. ☐ Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally tiled questionnaire becomes incomplete or inaccurate.)

**3. Name of local government officer with whom filer has employment or business relationship.**\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for **each officer** whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach **additional pages** to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

**4.****Signature of person doing business with governmental entity****Date Signed**



## **ADDITIONAL CONDITION OF AWARD —**

### **DISCLOSURE OF INTERESTED PARTY FORM:**

#### **NEW OBLIGATION OF THE CITY TO RECEIVE INFORMATION FROM WINNING BIDDER**

Effective January 1, 2016, pursuant to Texas Government Code, Section 2252.908 (the "Interested Party Disclosure Act"), the City may not award a contract to a bidder unless the bidder submits a Certificate of Interested Parties Form 1295 (the "Disclosure Form") to the City as prescribed by the Texas Ethics Commission ("TEC"). In the event that the bidder's bid for the Wastewater Manhole Rehabilitation Project is the best bid received, the City or its consultant, will promptly notify the bidder. That notification will serve as the conditional verbal acceptance of the bid. Upon this acceptance, the winning bidder must promptly, not later than **4: 00 p.m.** (CST) on \_\_\_\_\_, file the materials described below.

### **PROCESS FOR COMPLETING THE DISCLOSURE FORM**

The Disclosure Form can be found at <https://www.ethics.state.tx.us/foms/1295.pdf>, and reference should be made to the following information in order to complete it

- (a) item 2 — Name of City ("City of Kingsville, Texas")
- (b) item 3 — the identification number ("TxCDBG 7218269"), and
- (c) item 3— description of the goods or services assigned to this contract by the City ("Construction Services for City of Kingsville's Downtown Improvements – Kleberg Avenue Project")

You must:

- 1) complete the Disclosure Form electronically at the TEC's "electronic portal", and
- 2) print, sign and deliver a NOTARIZED copy (scanned and emailed is fine) of the Disclosure Form and Certification of Filing that is generated by the TEC's "electronic portal."

The following link will take you to the electronic portal for filing:

<https://www.ethics.state.tx.us/TECCertInt/pages/login/certLogin.jsf>

Also, a detailed instruction video may be found here:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

Neither the City nor its consultants have the ability to verify the information included in a Disclosure Form, and neither have an obligation nor undertake responsibility for advising any business entity with respect to the proper completion of the Disclosure Form.

# CERTIFICATE OF INTERESTED PARTIES

Form 1295

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5 and 6 if there are no interested parties.			<b>OFFICE USE ONLY</b>	
1. Name of business entity filing form, and the City, State and Country of the business entity's place of business				
2. Name of governmental entity or state agency that is a party to the contract for which the form is being filed.				
3. Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.				
4. Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check Applicable)		
		Controlling	Intermediary	
5. Check only if there is NO Interested Party <input type="checkbox"/>				
6. AFFIDAVIT <span style="float: right;">I Swear, or Affirm, under penalty of perjury, that the above disclosure is true and correct.</span>				
<div style="text-align: right; margin-bottom: 20px;">           _____            Signature of authorized agent of contracting business entity         </div> <p>AFFIX NOTARY STAMP SEAL ABOVE</p> <p>Sworn to and subscribed before me, by the said _____ this the _____ day          of _____, 20_____, to certify which, witness my hand and seal of office.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div>_____ Signature of officer administering oath</div> <div>_____ Printed name of officer administering oath</div> <div>_____ Title of administering oath</div> </div>				
<b>ADD ADDITIONAL PAGES AS NECESSARY</b>				

**CONTRACTOR'S CERTIFICATION**  
**of RECOVERED MATERIAL**

**ACKNOWLEDGEMENT**

I, \_\_\_\_\_ of \_\_\_\_\_, (hereinafter called "Contractor"), acknowledge the recovered material bidding requirements found in 2 CFR 200.322 that requires the Contractor to procure those items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

I also acknowledge that this requirement shall apply to items purchased (1) where the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) where during the preceding fiscal year, the value of the quantity acquired was in excess of \$10,000.

Finally, I acknowledge the attached list of recovered materials included in the bid documents.

(For up-to-date listing, please go to <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#directory>)

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**USE OF RECOVERED MATERIAL**

Please check one:

- ☐ Recovered materials are included in this bid:  
Materials included \_\_\_\_\_
- ☐ Recovered materials are not reasonably available in a reasonable period of time.
- ☐ Recovered materials fail to meet reasonable performance standards, which are determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable.
- ☐ Recovered materials are only available at an unreasonable price.

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date